

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1017**

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**Introduced by Assembly Members Portantino and Brownley**

February 27, 2009

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An act to amend Section 680 of the Penal Code, relating to sexual assault crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1017, as amended, Portantino. Sexual assault crimes.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses to, upon the request of the victim, and subject to the commitment of resources, inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from ~~their~~ *the* case, whether or not that information ~~had~~ *has* been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified.

*This bill would require DNA analysis of rape kit evidence in a timely manner to ensure the longest possible statute of limitation, as specified, and no later than 6 months after the rape kit is obtained by the law*

*enforcement agency. The bill would delete language subjecting certain victim rights to the commitment of sufficient resources to respond to requests. The bill would require a law enforcement agency, if it does not analyze the DNA evidence of an assailant of a sexual assault victim within 6 months of obtaining the rape kit evidence where the assailant's identity is an issue, to inform the victim of this fact. The bill would also require each law enforcement agency responsible for taking or processing rape kit evidence to annually report to the Department of Justice the total number of rape kits in its possession that it has not tested or analyzed, as specified.*

The bill would further require each law enforcement agency to report to the Department of Justice the total number of sexual assault crimes reported in its jurisdiction that would require the offender convicted of the crime to register as a sex offender. By imposing new duties on local government agencies, the bill would impose a state-mandated local program.

*Existing law provides that the sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under the Sexual Assault Victims' DNA Bill of Rights is standing to file a writ of mandamus to require compliance with specified victim notification provisions.*

*This bill would instead provide that a sexual assault victim or the designated sexual assault victim advocate shall have standing to file a writ of mandamus to require compliance with any of the provisions addressed in the bill.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 680 of the Penal Code is amended to  
2 read:

1     680. (a) This section shall be known as and may be cited as  
2 the “Sexual Assault Victims’ DNA Bill of Rights.”

3     (b) The Legislature finds and declares all of the following:

4     (1) Deoxyribonucleic acid (DNA) and forensic identification  
5 analysis is a powerful law enforcement tool for identifying and  
6 prosecuting sexual assault offenders.

7     (2) Victims of sexual assaults have a strong interest in the  
8 investigation and prosecution of their cases.

9     (3) Law enforcement agencies have an obligation to victims of  
10 sexual assaults in the proper handling, retention and timely DNA  
11 testing of rape kit evidence or other crime scene evidence and to  
12 be responsive to victims concerning the developments of forensic  
13 testing and the investigation of their cases.

14     (4) The growth of the Department of Justice’s Cal-DNA  
15 databank and the national databank through the Combined DNA  
16 Index System (CODIS) makes it possible for many sexual assault  
17 perpetrators to be identified after their first offense, provided that  
18 rape kit evidence is analyzed in a timely manner.

19     (5) Timely DNA analysis of rape kit evidence is a core public  
20 safety issue affecting men, women, and children in the State of  
21 California. ~~It is the intent of the Legislature, in order to further~~  
22 ~~public safety, to encourage DNA analysis of rape kit evidence~~  
23 ~~within the time limits imposed by Section 803. California.~~

24     ~~(6)~~

25     (c) A law enforcement agency assigned to investigate a sexual  
26 assault offense specified in Section 261, 261.5, 262, 286, 288a, or  
27 ~~289~~ *shall* perform DNA testing of rape kit evidence or other  
28 crime scene evidence in a timely manner in order to assure the  
29 longest possible statute of limitations, pursuant to Section 803.

30     ~~(7)~~

31     (d) For the purpose of this section, “law enforcement” means  
32 the law enforcement agency with the primary responsibility for  
33 investigating an alleged sexual assault.

34     ~~(e)~~

35     (e) (1) Upon the request of a sexual assault victim the law  
36 enforcement agency investigating a violation of Section 261, 261.5,  
37 262, 286, 288a, or ~~289~~ *may shall* inform the victim of the status  
38 of the DNA testing of the rape kit evidence or other crime scene  
39 evidence from the victim’s case. The law enforcement agency  
40 may, at its discretion, require that the victim’s request be in writing.

1 The law enforcement agency may respond to the victim's request  
2 with either an oral or written communication, or by electronic mail,  
3 if an electronic mail address is available. This subdivision does  
4 not require that the law enforcement agency communicate with  
5 the victim or the victim's designee regarding the status of DNA  
6 testing absent a specific request from the victim or the victim's  
7 designee.

8 (2) Sexual assault victims have the following rights:

9 (A) The right to be informed whether or not a DNA profile of  
10 the assailant was obtained from the testing of the rape kit evidence  
11 or other crime scene evidence from their case.

12 (B) The right to be informed whether or not the DNA profile  
13 of the assailant developed from the rape kit evidence or other crime  
14 scene evidence has been entered into the Department of Justice  
15 Data Bank of case evidence.

16 (C) The right to be informed whether or not there is a match  
17 between the DNA profile of the assailant developed from the rape  
18 kit evidence or other crime scene evidence and a DNA profile  
19 contained in the Department of Justice Convicted Offender DNA  
20 Data Base, provided that disclosure would not impede or  
21 compromise an ongoing investigation.

22 (3) This subdivision is intended to ~~encourage~~ *require* law  
23 enforcement agencies to notify victims of information that is in  
24 their possession. It is not intended to affect the manner of or  
25 frequency with which the Department of Justice provides this  
26 information to law enforcement agencies.

27 ~~(d) If~~

28 *(f) DNA analysis of rape kit evidence shall be completed no*  
29 *later than six months after the rape kit is obtained by the law*  
30 *enforcement agency. However, if the law enforcement agency does*  
31 *not analyze the DNA evidence for the assailant of a victim of a*  
32 *sexual assault offense specified in Section 261, 261.5, 262, 286,*  
33 *288a, or 289; within six months of obtaining the rape kit evidence*  
34 *where the assailant's identity is in issue, the victim shall be*  
35 *informed, either orally or in writing, of that fact by the law*  
36 *enforcement agency.*

37 ~~(e)~~

38 *(g) If the law enforcement agency intends to destroy or dispose*  
39 *of rape kit evidence or other crime scene evidence from an*  
40 *unsolved sexual assault case prior to the expiration of the statute*

1 of limitations as set forth in Section 803, a victim of a violation  
2 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written  
3 notification by the law enforcement agency of that intention.

4 ~~(f)~~

5 *(h)* Written notification under subdivision ~~(d) or (e)~~ *(f) or (g)*  
6 shall be made at least 60 days prior to the destruction or disposal  
7 of the rape kit evidence or other crime scene evidence from an  
8 unsolved sexual assault case where the election not to analyze the  
9 DNA or the destruction or disposal occurs prior to the expiration  
10 of the statute of limitations specified in Section 803.

11 ~~(g)~~

12 *(i)* A sexual assault victim may designate a sexual assault victim  
13 advocate, or other support person of the victim's choosing, to act  
14 as a recipient of the above information required to be provided by  
15 this section.

16 ~~(h)~~

17 *(j)* It is the intent of the Legislature that a law enforcement  
18 agency responsible for providing information under subdivision  
19 ~~(e)~~*(e)* do so in a timely manner and, upon request of the victim or  
20 the victim's designee, advise the victim or the victim's designee  
21 of any significant changes in the information of which the law  
22 enforcement agency is aware. In order to be entitled to receive  
23 notice under this section, the victim or the victim's designee shall  
24 keep appropriate authorities informed of the name, address,  
25 telephone number, and electronic mail address of the person to  
26 whom the information should be provided, and any changes of the  
27 name, address, telephone number, and electronic mail address, if  
28 an electronic mailing address is available.

29 ~~(i)~~

30 *(k)* A defendant or person accused or convicted of a crime  
31 against the victim shall have no standing to object to any failure  
32 to comply with this section. The failure to provide a right or notice  
33 to a sexual assault victim under this section may not be used by a  
34 defendant to seek to have the conviction or sentence set aside.

35 ~~(j)~~

36 *(l)* Each law enforcement agency responsible for taking or  
37 processing rape kit evidence shall annually report to the  
38 Department of Justice the total number of rape kits in its possession  
39 that it has not tested or analyzed. The law enforcement agency  
40 shall include in its report to the department the number of untested

1 or unanalyzed rape kits in its possession by year, covering at least  
2 the previous five years.

3 ~~(k)~~

4 (m) Each law enforcement agency shall annually report to the  
5 Department of Justice the total number of sexual assault crimes  
6 reported in its jurisdiction that would require an offender convicted  
7 of the crime to register as a sex offender pursuant to Section 290.  
8 This information shall be provided to the department by the code  
9 section or sections violated.

10 ~~(l) The sole civil or criminal remedy available to a sexual assault~~  
11 ~~victim for a law enforcement agency's failure to fulfill its~~  
12 ~~responsibilities under this section is~~

13 (n) *A sexual assault victim or the designated sexual assault*  
14 *victim advocate has standing to file a writ of mandamus to require*  
15 *compliance with subdivision (d) or (e) this section.*

16 SEC. 2. If the Commission on State Mandates determines that  
17 this act contains costs mandated by the state, reimbursement to  
18 local agencies and school districts for those costs shall be made  
19 pursuant to Part 7 (commencing with Section 17500) of Division  
20 4 of Title 2 of the Government Code.